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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Burt</u>	<b>LAST UPDATED</b> <u>3/6/23</u>	<b>ORIGINAL DATE</b> <u>3/2/23</u>
<b>SHORT TITLE</b> <u>Racetrack Gaming License Changes</u>	<b>BILL NUMBER</b> <u>Senate Bill 410</u>	
	<b>ANALYST</b> <u>Anderson/Graeser/ Gaussoin</u>	

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25	FY26	FY27		
	No direct impact, but may increase gaming revenues				Recurring	General Fund/Gaming Tax
	No direct impact, but may change racing revenues				Recurring	General Fund/Racing Receipts

Parenthesis ( ) indicate revenue decreases.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No Fiscal Impact	No Fiscal Impact	No Fiscal Impact	Recurring	Racing Commission

Parenthesis ( ) indicate expenditure decreases.

Relates to Senate Bills 330 and 336

### Sources of Information

LFC Files

Responses Received From  
State Racing Commission (SRC)

No Response Received  
New Mexico Board of Veterinary Medicine (NMBVM)  
Regulation and Licensing Department (RLD)

## SUMMARY

### Synopsis of Senate Bill 410

Senate Bill 410 would require the New Mexico Racing Commission to consider each racetrack licensee’s request for race dates and days as part of the licensing decision and strikes requirements in the Gaming Control Act that tied racetrack gaming licenses to a specific number of live races on a specific number of days, depending on a track’s net take.

The bill states a racetrack applicant shall “use its business judgment” in making its request for

race days and consider the welfare of the horses, available prize money, staff and horses availability, and other relevant factors. The allocation of race dates would still be regulated by the Racing Commission.

The criteria for voiding a licensee would no longer refer to the race date metrics but to action by the Racing Commission if the track fails to conduct racing on the allocated race dates (with a number of exceptions, including for a *force majeure*, an extraordinary event outside the control of the licensee).

This bill does not contain an effective date, and as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed.

## FISCAL IMPLICATIONS

Currently, live race days are not specified in law except that gaming licenses—the key to a racetrack becoming a “racino”—are conditioned on larger racetracks holding at least nine live races four days a week during its licensed meet and smaller racetracks holding at least 10 live races three days a week during its meet (Section 60-2E-27 NMSA 1978). A larger racetrack is one that pays gaming taxes on a net take greater than \$8 million, while a smaller racetrack pays taxes on a take of \$8 million or less. Similarly, a racetrack cannot simulcast and take wagers on races from other tracks unless it holds at least 17 live race days per meet (60-1A-16 NMSA 1978). Senate Bill 410 would strike the live race day minimums for obtaining a gaming license, although it leaves in place the 17 live race days required for simulcasting.

The likely consequence of the provisions of this bill would be fewer live race dates and a decrease in track handles. As noted by the Racing Commission, “The racetracks will have incentive to grow their gaming enterprise without the necessity to increase their race days from three to four days per week.” Additionally, smaller tracks would have more incentive to grow the casino portion of their operations because that would increase total purses and general revenue without having to bear the burden of additional (and costly) race dates.

The racing tax generated provides very little general fund revenue, particularly in comparison with the yield of the gaming excise tax:

From the December 2022 *Consensus Revenue Forecast*:

	FY17	FY18	FY19	FY20	FY21	FY22	FY23
Racing receipts (\$ millions)	0.600	1.048	0.765	0.00	0.000	0.000	0.000
Gaming Excise (\$ millions)	59.5	62.1	64.9	46.0	24.7	68.4	68.7

If the racinos decrease the expenses of running the racetrack side of the business and use the freed-up funds to enhance and promote the casino side of the business, the proposal of this bill may increase general fund revenues.

## SIGNIFICANT ISSUES

By removing live races and live race days minimums for racinos, Senate Bill 410 would change the way racetracks think about how many days to hold live races. Race tracks can only operate

gaming machines when conducting live or simulcast racing, but must only hold live races 17 days in order to simulcast races as many days as they like. From the Racing Commission: “SB410 would give the racetracks, with the approval of the Racing Commission, the ability to change their race date model based on the ever-changing business environment and not their gaming tax paid to the state.” (See attachment: Live Horse Racing Days by Racetrack.)

For example, it might be more efficient for these tracks to have more races on fewer days of the week. If the result is larger purses for each race, racetracks might be able to recruit better horses and attract more race enthusiasts

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB410 relates to Senate Bill 330, which seeks to transfer the functions of the Racing Commission to the Regulation and Licensing Department and abolish the Racing Commission; and Senate Bill 336, which reduces the gaming tax to pay for federally required health insurance for jockeys and exercise riders.

SB410 also relates to House Bill 508, a failed bill from the 2019 legislative session that would have amended the timeframe for the number of live race days necessary for a racetrack to maintain a gaming operator’s license. That bill proposed to create a new section of the Horse Racing Act that provided that live racing would begin on the first day of an authorized race meet and conclude on the final authorized day:

Racetracks that pay tax on revenue of less than \$8 million per fiscal year shall be required to conduct three days of live racing with at least ten live races per day for each week of its licensed race meet. Racetracks that pay tax on revenue over \$8 million per fiscal year shall be required to conduct a minimum four days of live races with at least nine races per day during its licensed race meet. No more than three consecutive days will be allowed to lapse in live racing from the date a race meet ends at the racing grounds of one racetrack and the beginning of a race meet for another racetrack licensee.

## **PERFORMANCE IMPLICATIONS**

The LFC tax policy of accountability is not met because TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking advantage of the tax expenditures implicit in the operations of a racetrack in New Mexico.

## **OTHER SUBSTANTIVE ISSUES**

New Mexico law (Section 60-1A-6 NMSA 1978) classifies racetracks in two groups based on wagers (as opposed to the tax paid on the take used to determine gaming operators’ licenses): From statute:

- A. A license to conduct a race meet in New Mexico shall be classified as either a class A or class B license, determined by the commission as follows:
  - (1) a class A racetrack license shall be issued to a racetrack licensee who received from all race meets in the preceding calendar year a gross amount

wagered through the pari-mutuel system of ten million dollars (\$10,000,000) or more; and

(2) a class B racetrack license shall be issued to a racetrack licensee who received from all race meets in the preceding calendar year a gross amount wagered through the pari-mutuel system of less than ten million dollars (\$10,000,000).

B. A new racetrack license to conduct a race meet in New Mexico shall be given a classification by the commission based on an estimate of the anticipated gross amounts projected to be received by the new racetrack licensee from all pari-mutuel wagering in the racetrack licensee's first full calendar year of racing. After the racetrack licensee's first full calendar year of racing, the commission shall review the classification and change it if necessary.

C. Each class of license is subject to all provisions of the Horse Racing Act, except as otherwise provided in that act. The commission shall adopt and promulgate rules necessary to provide for license classification.

According to the New Mexico Racing Commission (NMRC), Class A racetracks in New Mexico are the Downs at Albuquerque, Sunland Park, and Zia Park, and Ruidoso Downs. New Mexico are Sunray Park is Class B. NMRC stated Zia Park will likely be a Class B in FY24 because they ran 30 days this year.

LG/GA/mg/hg/ne/al

# LIVE HORSE RACING DAYS BY RACETRACK

Sunland Park
  Downs at Albuquerque
  Ruidoso Downs
  New Mexico State Fair
  SunRay Park
  Zia Park

